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Supreme Court, U.S.
FILED
JUL 23 1991
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No. 90-1948

In the

Supreme Court of the United States

OCTOBER TERM, 1991

MARY T. RAM,
PETITIONER,

v.

COMMONWEALTH OF MASSACHUSETTS,
DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF MASSACHUSETTS,
DEPARTMENT OF PUBLIC WORKS,
TOWN OF CHARLTON,
REPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI OF RESPONDENT, TOWN OF CHARLTON

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**Counsel of Record*

BATEMAN & SLADE, INC BOSTON, MASSACHUSETTS

Questions Presented.

Whether a state statute which imposes a thirty day present-eriod as a condition precedent to suing a municipality ries allegedly incurred as a result of a defect in a public rationally related to a legitimate state interest.

Whether a state statute which imposes a thirty day pre-nt period as a condition precedent to suing a municipal-injuries allegedly incurred as a result of a defect in a way violates the Due Process Clause of the Fourteenth ment to the United States Constitution.

Whether the Court should exercise its certiorari jurisdic-review the constitutionality of a state statute which a $5,000 damage cap when the petitioner has neither d a finding of liability against the municipality nor l an award in excess of the damage limitation.

Whether a $5,000 damage cap for injuries allegedly as a result of a defect in a public way is rationally o a legitimate state interest.

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nally Related to a Legitimate State Interest
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ON PETITION FOR WRI
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BRIEF I
PETITION FOR
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The decision of the Sup
in *Ram* v. *Charlton*, is rep
208 (1991).

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SITION TO
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cial Court of Massachusetts
09 Mass. 481, 567 N.E.2d

Statutes Involved.

statutes cited in the Petition, Respondent
vites the Court's attention to the following

eral Laws, c. 84, § 19

ice.

shall be in writing, signed by the
or by someone in his behalf, and may
ne case of a county, to one of the
sioners or the county treasurer; in the
the mayor, the city clerk or treasurer;
town, to one of the selectmen or to
or treasurer. If the person injured dies
required for giving the notice, his
dministrator may give such notice
ys after his appointment. If by reason
mental incapacity it is impossible for
ed to give the notice within the time
y give it within thirty days after such
been removed, and if he dies within
his executor or administrator may
within thirty days after his appoint-
n of written communication signed
o injured, or by some person in his
is executor or administrator, or by
behalf of such executor or adminis-
ntains the information that the person
giving the name and place of resi-
rson injured and the time, place and
ury or damage, shall be considered
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Instituting claims actions.

A civil action s
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any claim by the ex
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This is a Petition for Ce
of the Supreme Judicial Co
T. Ram, is a resident of H
setts. Respondent, Town o
in Worcester County, Ma
wealth of Massachusetts D
partment of Public Works,
ment with offices in Bosto

. 258, § 4

denial; limitation of

be instituted against a
for damages under this
nall have first presented
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t evidence of liability

ne Case.

eking to reverse the decision
ssachusetts. Petitioner, Mary
mpshire County, Massachu-
, is a municipal corporation
ts. Respondents, Common-
t of Transportation and De-
rtments of the state govern-
k County, Massachusetts.

Petitioner, Mary T. Ram, alleges that on the night of November 18, 1983, she was driving south on Route 31, Dresser Hill Road, in the Town of Charlton. During the course of that evening, Ms. Ram had visited friends and had consumed a small amount of alcohol. The single-car accident occurred when Ms. Ram failed to maintain control of her vehicle and went off the road. There were no witnesses. Because no depositions were taken, the cause of the accident is unknown, despite Petitioner's bald assertion that "The accident was caused solely by the unexpected and dangerous contour of the Road." (Petition at 22). As a result of the accident, Ms. Ram suffered serious injuries and was hospitalized for several months.

On March 29, 1985, Petitioner sent a letter to the Board of Selectmen of the Town of Charlton purporting to give notice of a claim under M.G.L. c. 258, § 2, the Massachusetts Tort Claims Act. (See Petition at 18-20 for the text of the statute subjecting a municipality to liability for negligence.) Under M.G.L. c. 258, § 4, a claimant must make presentment of the claim within two years of the date of the accident. On November 14, 1986, suit was filed in Suffolk Superior Court against the Town of Charlton and the Commonwealth of Massachusetts Departments of Transportation and Public Works alleging negligent design, construction and maintenance of Route 31, Dresser Hill Road, in Charlton, improper lighting of the road, failure to warn users that the road was dangerous, improper determination and posting of speed limits along Route 31 and breach of unnamed express or implied warranties.

On July 8, 1988, Respondent, Town of Charlton, filed a Motion for Summary Judgment with accompanying Brief and Affidavits. The Town argued that Petitioner's injury was cognizable only under M.G.L. c. 84, § 15 governing injuries resulting from a defect in the way. A "defect" is defined as "anything in the state or condition of the way that renders it unsafe or inconvenient for ordinary travel." *Trioli* v.

ss. App. Ct. 394, 397, 446 N.E.2d 92, 94
. *Worcester*, 383 Mass. 707, 708, 421 N.E.2d
(1981). Massachusetts General Laws c. 84,
esentment of a notice of claim under § 15
s after the alleged injury. Once notice has
designated authorities, the plaintiff has three
ne the action accrues to file suit. In the Motion
gment, Respondent Town of Charlton argued
id not given notice of her claim within the
and thus was barred from bringing suit. The
ed on November 22, 1988 (Petition at 82-85).
1989, the other defendants filed a similar
nary Judgment on the ground that Petitioner
mply with a similar notice requirement in
8. The second Motion was allowed on April
ls from the allowances of the motions were
case was entered on the docket of the Mas-
ls Court on July 31, 1989. The Supreme
noved the case *sua sponte* and affirmed the
perior Court (Petition at 56-81). A petition
ore the Supreme Judicial Court was denied
91 (Petition at 86). The present Petition for
d on June 22, 1991.

Summary of Argument.

a Writ of Certiorari challenges the constitu-
ections of a state statute imposing a thirty
ment for presentment of claims for injuries
cts in a public way and limiting the amount
erable against the municipality in whose
blic way lies. Respondent Town of Charlton

violate the Due Process
nt because it does not de-
t or affect her as a member

ly related to the legitimate
wns to keep their ways in
bility. Respondent further
sion of the statute is not
not receive a finding of
nt in excess of the damage
ooses to decide the issue,
e limitation is also ration-
conserving municipal re-
recovery for those injured
ns drawn between those
e injured by other forms
ner's Fourteenth Amend-

NOT BURDEN A FUNDA-
PECT CLASS NEED ONLY
LEGITIMATE STATE IN-
ESS CHALLENGE.

med to be constitutional.
. *Murgia*, 427 U.S. 307,
to convince the courts of
dgments." *Minnesota* v.
456, 464 (1981). Rather,
of a state statute bears a

heavy burden of convi
the Due Process Clause
Express Agency, Inc. v.
When a state statute d
affect a suspect class,
Co., 304 U.S. 144, 15
determine whether the
a legitimate state intere
Board v. *Fritz*, 449 U.
at 319, Marshall, J.,
U.S. 1, 17 (1979); *New*
(1976). "The term 'ratio
that an impartial law
classification would se
transcends harm to the
'rational' . . . includes
that must always ch
sovereign's duty to gove
Living Center, Inc., 47
concurring. If the statut

There is no allegation
of a "suspect class," as t
Products, Co., 304 U.
tionality). Thus, the case
of limitations for provin
are inapposite. Illegitim
a quasi-suspect class, re
for discrimination agai
Brown, 462 U.S. 1, 7 (
is warranted for statutes
Id. at 8; *Mills* v. *Hablu*

Petitioner attempts to
several fundamental righ

e violates
t. *Railway*
12 (1949).
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427 U.S.
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Pickett v.
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U.S. at 378; *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422, 434, 437 (1982). The state may erect reasonable procedural requirements for adjudication, *id.*, at n.7, such as statutes of limitation, *United States* v. *Kubrick*, 444 U.S. 111, 117, 125 (1979); *Chase Securities Corp.* v. *Donaldson*, 325 U.S. 304, 314 (1945); *Wood* v. *Carpenter*, 101 U.S. 135, 139 (1879), statutes of repose and presentment periods, which limit access to a hearing on the merits. It is also worth noting that Petitioner was given a full and fair opportunity to be heard in the Superior Court and the Supreme Judicial Court. *Cf. Mullane* v. *Central Hanover Bank & Trust Co.*, 337 U.S. 306, 314 (1950). She was ably represented by counsel at the two motion hearings and in oral argument before the full Supreme Judicial Court of Massachusetts (Petition at 87-113). At those hearings, she had the opportunity to present her theory of the case. *Lindsey* v. *Normet*, 405 U.S. 56, 66 (1972). That the Courts did not agree with her does not indicate a denial of due process.

Thirdly, Petitioner argues that she has been denied a fundamental property right by being prevented from pursuing her claim against the Town of Charlton to trial (Petition at 33, 41). It is true that the state may not destroy a property interest without first giving the putative owner an opportunity to present her claim. *Zimmerman Brush Co.*, 455 U.S. at 434; *Wolff* v. *McDonnell*, 418 U.S. 539, 557-558 (1974); *Goldberg* v. *Kelly*, 397 U.S. 254, 262 (1970). Property interests protected by the Due Process Clause of the Fourteenth Amendment extend beyond real estate, chattel or money. *Board of Regents of State Colleges* v. *Roth*, 408 U.S. 564, 571-572 (1972). However, to have a property interest in something, a person must have more than an abstract need or desire for it. "He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *Id.* at 577. In the instant case, Petitioner has no more than a tort claim which might or might not entitle her to recover damages from the town

if her injuries are d
in a public way. T
entitled to the protec
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property right in Fa
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to welfare benefits)
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The right to recov
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States Constitution c
or the abolition of
obtain a permissible
U.S. 117, 122 (192
sovereign immunity
impose conditions p
444 U.S. at 117-118
Claims Act); *Black* v
(Statute of Limitatio
in fashioning its ow
discernable federal
wholly arbitrary or c
455 U.S. at 433; *Ma*
283 (1980); *Ferri* v
Even if Petitioner w
requirement a statut
held that statutes of
Donaldson, 325 U.S

upheld them as valid exercises of
444 U.S. at 117, 125, *Donaldson*,
North Dakota, 466 U.S. at 257;
S. at 139, when they do not affect
ct classes. Thus, petitioner has not
of any property right entitled to

cked on Fourteenth Amendment
es not merit heightened scrutiny,
slature's determination concerning
e. *Friedman* v. *Rogers*, 440 U.S.
, 427 U.S. at 303. The Legislature
a particular problem in one piece
. *Lee Optical Co. of Oklahoma*,
Silver v. *Silver*, 280 U.S. at 123.
ically consistent in every respect
to be constitutional. *Williamson*
oma, 348 U.S. at 487-488. If any
bly be conceived to have existed
d the statute which would demon-
p between the act and a legitimate
facts must be assumed to have
road Retirement Board v. *Fritz*,
nesota v. *Clover Leaf Creamery*
e Court has held: "[T]he judiciary
ture to judge the wisdom or desira-
leterminations made in areas that
rights nor proceed along suspect
Dukes, 427 U.S. at 303.

urt of Massachusetts employs the
deciding Fourteenth Amendment
he United States Supreme Court.
Fruit Co., Inc., 388 Mass. 228,
983); *Boston* v. *Keene Corp.*, 406

Mass. 301, 305, 547 N.E.2d 328, 332 (1989); *Zeller* v. *Cant*
395 Mass. 76, 83-84, 478 N.E.2d 930, 934 (1985). The S
preme Judicial Court rejected Petitioner's due process arg
ments, holding that the thirty day notice requirement of M.G.
c. 84, § 18 was rationally related to a permissible legislati
objective (Petition at 79); *Klein* v. *Catalano*, 386 Mass. 70
712, 437 N.E.2d 514, 52[illegible] (1982). The statute is part of
comprehensive legislative scheme to limit governmental liabi
ity for injuries due to defects in public ways while affordi
those injured a vehicle to recover. *Whalen* v. *Worcester Ele*
tric Light Co., 307 Mass. 169, 174-175, 29 N.E.2d 763, 76
(1940). Massachusetts General Laws c. 84 also imposes a
obligation on the municipality to keep its ways in good repai
See Section 1. To do so, it must have prompt notice of th
defect to evaluate the necessity and cost of repair and to preve
others from being injured. The thirty day notice provisio
serves those legitimate governmental objectives. Also, th
municipality has a duty to its citizens to conserve its resource
Section 15 allows a city or town to set aside funds for th
payment of meritorious claims. It further protects the muni
ipality against claims which may prove to be fraudulent bu
are nonetheless litigated to the full extent. *Trioli* v. *Sudbur*
15 Mass. App. Ct. at 396, 446 N.E.2d at 94; *Cf. Lodge*
District Attorney for Suffolk County, 21 Mass. App. Ct. 27
283, 486 N.E.2d 764, 768 (1985), *rev. den.* 396 Mass. 110
488 N.E.2d 1199 (1986) (purposes of presentment requireme
of Massachusetts Tort Claims Act).

Petitioner expresses skepticism of the reasons articulated b
respondent and adopted by the Supreme Judicial Court justif
ing the statute as a valid exercise of legislative power (Petitio
at 35-36). This argument misinterprets the standard by whic
state statutes are evaluated for constitutionality. The reason
given by the Court in its interpretation need not have actuall
existed at the time the legislation was enacted. If the facts upo

, such as the thirty days required by M.G.L.
necessary for injuries allegedly caused by
ays. While the legislative distinctions may
or a particular claimant, her resort is to the
e courts. *Vance* v. *Bradley*, 440 U.S. 93,

that it is irrational to subject those severely
of defects in a public way to a thirty day
persons injured by other forms of municipal
o years in which to present their claims to
icials. She also argues that claimants who
ntaged by the notice provision, while the
ho have died are given a longer time to
r M.G.L. c. 229, § 2, the Wrongful Death
t 45-48). The statute, however, contains a
ves it from attack as irrational. Massachu-
c. 84, § 19 provides in part: "If by reason
al incapacity it is impossible for the person
notice within the required time, he may
y days after such incapacity has been re-
oner never attempted to invoke this clause
he requirements of Section 18. At the very
tion 19 would have raised a genuine issue
ich might have precluded the allowance of
on for Summary Judgment and given her
merits which she now claims was denied.

D NOT REVIEW A STATUTE LIMITING DAM-
BLE AGAINST A MUNICIPALITY WHEN THE
NOT RECEIVED A FINDING OF LIABILITY
WN.

o not issue advisory opinions. They deal
egal issues presented in actual cases. *United*

tected from damage claims .
victim's recovery in highwa
Brookfield, 97 Wis.2d 356, 3

In the past, the Supreme Ju
tional challenges to the dama
§ 2 and the Sovereign Imm
§ 85K. In *Hallett* v. *Wrent*
N.E.2d 1189, 1193 (198
$100,000.00 damage cap of
all claims stemming from a s
did not violate either the Du
Clause of the Fourteenth Am
that the plaintiffs did not hav
damages which would compe
Id. at 557, 499 N.E.2d at 119
v. *New England Medical C*
N.E.2d 329, 333-334 (1989)
damage limitation of the Ma
Statute. While the Court con
against a charity may be lo
and the cost of litigating medi
it nonetheless found that the
Process Clause. Moreover, t
not the judiciary's role to eq
plaintiffs and defendants. *Id*
the amount of damages recov
that change should come fro
This Court cannot declare th
out of sympathy for Petitione

Conclusion.

Wherefore, for the foregoing reasons, Respo
Charlton, asks this Court to deny the Petiti
Certiorari.

Respectfully submitted,

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